

# Traffic Safety Facts

## Laws

January 2006

## .08 BAC Illegal Per Se Level

### Background

It is illegal per se (in itself) to drive a motor vehicle with a blood alcohol concentration (BAC) at or above a specified level in all States. The previous level in most States had been .10 grams per deciliter (g/dL) for drivers 21 and older, but now all 50 States, the District of Columbia, and Puerto Rico have enacted laws that set a BAC lower level of .08 g/dL. In a 1992 Report to Congress, NHTSA recommended that all States lower the illegal per se level to .08 for all drivers 21 and older.

In 1998, as part of the Transportation Equity Act for the 21st Century (TEA-21), a new Federal incentive grant was created to encourage States to adopt a BAC level of .08 g/dL as illegal per se.

In 2000, Congress passed the Department of Transportation and Related Agencies Appropriations

Act, 2001, adopting a BAC of .08 as the national illegal limit for impaired driving. The statute provides that States that do not adopt a conforming .08 BAC law by October 1, 2003, will be subject to a withholding of two percent of certain highway construction funds. Each year, the withholding percentage increases by two percent, up to eight percent in FY 2007 and later. Those states that adopt a conforming .08 BAC law within four years of any withholding will be reimbursed for those withheld funds. If a State has not adopted a conforming .08 BAC law by October 1, 2007, portions of its withheld funds shall begin to lapse and will no longer be available to the State.

### Key Facts

- In 2004, 39 percent of the 42,636 motor vehicle deaths were alcohol-related. This translates to 16,694 alcohol-related motor vehicle deaths during that year, accounting for an average of one alcohol-related fatality every 31 minutes.
- Of the people who died in alcohol-related crashes in 2004, 14,409 (86%) were killed in crashes where at least one driver or nonoccupant had a BAC of .08 g/dL or higher. Of the 14,409 people killed in such crashes, 69 percent were drivers or nonoccupants with BAC levels at or above .08 g/dL.

The remaining 31 percent were drivers or nonoccupants with either no BAC or BAC below .08 g/dL, or were passengers.

- The National Highway Traffic Safety Administration (NHTSA) position on the relationship between BAC and driving is that driving performance degrades with every drink.
- A comprehensive NHTSA study provides what is perhaps clear evidence of the significant impairment that occurs in the driving-related skills of all drivers with BAC of .08, regardless of age, gender, or drinking history.
- BAC laws set at .08 are effective in reducing alcohol-related fatal crashes. At least 10 studies, covering many of the States that have enacted .08 BAC laws, have consistently shown that .08 BAC laws are associated with reductions in alcohol-related fatalities, particularly in conjunction with the administrative license revocation (ALR) laws that are present in 41 States.
- As of January 2006, all 50 States, the District of Columbia, and Puerto Rico have enacted laws making it illegal to drive with a BAC of .08 g/dL or higher.
- NHTSA has published several comprehensive studies on the effectiveness of .08 BAC laws. These studies found consistent and persuasive evidence that

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.08 BAC laws are associated with reduced incidence of alcohol-related fatal crashes. A study of the effectiveness of a .08 BAC law implemented in Illinois in 1997, found that the .08 BAC law was associated with a 13.7-percent decline in the number of drinking drivers involved in fatal crashes. The reduction included drivers at both high and low BAC levels. This is significant because critics of .08 BAC laws have often claimed that these laws do not affect the behavior of high-BAC drivers. The study also found that there were no major problems reported by local law enforcement or court systems due to the change in the law. An updated analysis of Illinois's law estimated that 105 lives were saved in the first two years since its implementation.

- In a comprehensive study of drivers involved in fatal crashes in all 50 States and the District of Columbia from 1982 to 1997, it was estimated that .08 BAC laws reduced driver alcohol-related fatal crashes by 8 percent.
- A 1999 report by the U.S. General Accounting Office (GAO) reviewed the studies available at that time and found "strong indications that .08 BAC laws, in combination with other drunk driving laws (particularly license revocation laws), sustained public education and information efforts, and vigorous and consistent enforcement, can save lives." The GAO report also concluded that a .08 BAC law can be "an important component of a State's overall highway safety program."

## Why .08?

The research is clear. Virtually all drivers, including experienced

drinkers, are significantly impaired at a .08 BAC. As early as 1988, a NHTSA review of 177 studies clearly documented this impairment. NHTSA released a later review of 112 more-recent studies, providing additional evidence of impairment at .08 BAC and below. The results of the nearly 300 studies reviewed have shown that, at a .08 BAC level, virtually all drivers are impaired in the performance of critical driving tasks such as divided attention, complex reaction time, steering, lane changing, and judgment.

The risk of being in a crash gradually increases as a driver's BAC increases, but increases more rapidly once a driver reaches or exceeds .08 BAC compared to drivers with no alcohol in their blood streams. A recent study estimated that drivers at .08 to .09 BAC are anywhere from 11 to 52 times more likely to be involved in a fatal crash than drivers at .00 BAC, depending upon their age and gender.

Lowering the per se limit is an effective countermeasure that will reduce alcohol-related traffic fatalities, especially when combined with an ALR law. There was a 12-percent reduction in alcohol-related fatalities in California in 1990 after a .08 law and an ALR law went into effect. The decrease in alcohol-related fatalities occurred at both high and low BAC levels, including drivers with BAC levels of .20 or greater. A 1996 study at Boston University showed that States adopting .08 BAC laws experienced 16-percent and 18-percent post-law declines in the proportions of fatal crashes involving fatally-injured drivers whose BAC levels were .08 or higher and .15 or higher, respectively. The Centers for Disease Control and Prevention

concluded that .08 BAC laws are associated with a median 7-percent reduction in alcohol-related traffic fatalities in States that adopt them.

The .08 BAC limit is reasonable and has the potential for saving hundreds of lives and reducing thousands of serious injuries each year, if implemented by all States.

The public supports a .08 BAC level. A survey conducted in 2001 indicated that 88 percent of the people in States with a .08 BAC law support the law.

## Point-Counterpoint

States considering .08 BAC laws should review all the facts, including the rationale behind the .08 BAC goal and its potential impact on alcohol-related deaths. Opposition to .08 BAC laws generally includes the following arguments:

- **Point:** In 1999, the GAO conducted a critical review of the .08 BAC studies and concluded that these laws are not effective in reducing alcohol-related fatalities.

**Counterpoint:** This statement is not correct. The GAO report stated that there are "strong indications that .08 BAC laws, in combination with other drunk driving laws (particularly license revocation laws), sustained public education and information efforts, and vigorous and consistent enforcement, can save lives."

- **Point:** .08 BAC legislation will not affect problem-drinker drivers who have high BAC levels.

**Counterpoint:** The latest research shows that .08 BAC laws not only reduce the incidence of impaired driving at lower BAC levels, but they

also reduce the incidence of impaired driving at higher BAC levels (i.e., over .10). A .08 BAC law serves as a general deterrent to all those who drink and drive because it sends a message that the State is getting tougher on impaired driving, and it makes many people think twice about getting behind the wheel after they have had too much to drink. A .08 BAC law should be a key component of any State's overall program to reduce impaired driving. While repeat offenders do account for a significant part of the problem, most fatally-injured drinking drivers have no prior alcohol-related offenses.

- **Point:** .08 BAC laws make criminals out of normal social drinkers.

**Counterpoint:** Impairment and crash risk are the issues, not how many drinks it may take to get to a .08 BAC level. Numerous studies have indicated that at a .08 BAC level, virtually all drivers are impaired on critical driving tasks such as divided attention, complex reaction time, steering, lane changing, and judgment. In addition, studies have shown that the risk of being involved in a fatal crash is much greater than at a .00 BAC level.

- **Point:** .08 is just the first step in a movement toward zero tolerance.

**Counterpoint:** A .08 BAC limit is not meant to restrict individuals from drinking alcohol. Rather, the limit exists to prevent individuals from operating a motor vehicle while impaired by alcohol, putting their own lives and the lives of others at risk.

- **Point:** .08 BAC laws will overwhelm police and clog the criminal justice system.

**Counterpoint:** Two studies, one in California and another in Illinois, looked at the impact of .08 BAC laws on enforcement efforts and the criminal justice system. These studies have not found any significant problems with the enforcement of lower BAC limits for police or the State courts.

## **.05 BAC Limit in Other Countries**

The international trend continues to be to reduce illegal per se limits to .05 BAC or lower. The illegal limit is .05 BAC in numerous countries, including Australia, Belgium, Bulgaria, Denmark, Finland, France, Germany, Greece, Ireland, Israel, The Netherlands, Portugal, Russia, South Africa, Spain, and Turkey. Russia, Sweden, and Norway have a limit of .02 BAC and Poland recently went to .03 BAC. Several countries have reported studies indicating that lowering the illegal per se limit from .08 to .05 reduces alcohol-related fatalities (e.g., Australia, Austria, Belgium, The Netherlands, and France).

Laboratory studies from these countries indicate that impairment in critical driving functions begins at low BACs. Most subjects in these studies were significantly impaired at .05 BAC with regard to visual acuity, vigilance, drowsiness, psychomotor skills, and information processing, compared to their performance at .00 BAC.

Leading medical, crash prevention, public health, and traffic safety organizations in the world support BAC limits at .05 or lower, including: the World Medical

Association, the American and British Medical Associations, the European Commission, the European Transport Safety Council, the World Health Organization, and the American College of Emergency Physicians.

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